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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1931.

No. 430.

IN THE MATTER

of

The Petition of SPENCER KELLOGG & SONS, INC., as Owner of the Motorboat "LINSEED KING", her engines, etc., for Limitation of Liability, Civil and Maritime.

SPENCER KELLOGG & SONS, INC.,
Petitioner,

HILDA M. HICKS, as Administratrix, and others,
Claimants-Respondents.

BRIEF FOR RESPONDENTS MILLICENT IFILL, DARNLEY BARKER AND KENNETH NORGROVE.

SAMUEL B. SEIDEL and
SIDNEY NEWBORG,
Counsel for Claimants,
IFILL, BARKER and NORGROVE.

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Claimants-Respondents.

BRIEF FOR RESPONDENTS IFILL, BARKER AND NORGROVE.

Statement.

Spencer Kellogg & Sons, Inc., hereinafter called petitioner, proceeded in the United States District Court for the Southern District of New York for limitation of its liability for wrongful death and personal injuries arising out of the sinking of the motorboat "Linseed King" in the Hudson River near New York City on December 20th, 1926.

The limitation proceeding was opposed by death and personal injury claimants, and after a trial, limitation was denied (Opinion of Hazel, J., R. 122-141, Interlocutory Decree, R. 142-146). In addition, negligence was affirmatively found (R. 144).

The claims were referred to a commissioner for ascertainment of damages. On the commissioner's report final judgment was entered allowing recovery in the case of certain claimants and dismissing the claims of others (R. 240-261). Cross appeals were then taken to the Circuit Court of Appeals for the Second Circuit: (a) By Spencer Kellogg & Sons, Inc. as to the question of negligence and limitation of liability, and (b) by certain claimants who felt aggrieved by the dismissal of their claims. The Circuit Court of Appeals affirmed the judgment of the District Court in all respects. This Court granted certiorari to the petitioner (R. 2377, and to the aggrieved claimants, R. 2378).

This brief is submitted on behalf of Millicent Ifill, as administratrix, etc., who recovered judgment for the death of her intestate for $12,573.05 and on behalf of Darnley Barker and Kenneth Norgrove who recovered judgments for personal injuries for $1,020 and $520 respectively. These respondents ask that the decree of the Circuit Court, as to them, be affirmed.

We take no position on the appeal (Oct. Term 1931, No. 444), taken by the claimants whose claims were dismissed as being within the sole jurisdiction of the New Jersey Workmen's Compensation Board and who seek to have the jurisdictional question reviewed by this Court as a question of law.

Summary of Facts.

On December 20, 1926, petitioner operated a linseed oil refinery at Edgewater on the west bank of the Hudson River, approximately opposite West 95th Street, Manhattan. Many of petitioner's employees lived in

Manhattan and were customarily ferried across the Hudson, morning and evening, on petitioner's motorboat "Linseed King" (R. 123). The regular voyage was between petitioner's plant and the 95th Street dock, a distance of about 1.35 miles (R. 123). One Rohweder operated the boat under the direction of Charles E. Stover, the general manager of petitioner's Edgewater plant.

The "Linseed King" was of a gross tonage of 10.75, net tonnage 7, length all over 45′, breadth 10.0′, and depth 4′ 6″ (R. 125). She contained a cabin 29½′ in length and a pilothouse raised 2½′ and 4′ long, separated from the cabin by a pipe rail. There were seats for not more than thirty-eight men in the cabin. On her last voyage the "Linseed King" carried not less than seventy-eight passengers (R. 134) and there were eighty-three life preservers and three life rings on board (R. 126, 344, 521, 571).

In addition to its regular employees, petitioner needed forty to fifty temporary laborers to unload cargo whenever a linseed ship docked at its Edgewater plant (R. 1768).

On Sunday, December 19, 1926, such a linseed ship, the "Tercero", carrying a large quantity of raw material docked at petitioner's plant at Edgewater (R. 1741). The usual quota of temporary laborers were required to unload the ship. Stover had an advertisement inserted in the New York World of December 19, 1926, for laborers, directing applicants to report at the West 95th Street dock at 6:30 A. M. on December 20, 1926 (R. 754-755; advertisement printed at R. 2343).

This need for temporary labor to unload the linseed ship is a fact of prime significance in this case. It renders improbable petitioner's contention that *bona fide* orders had been given to lay up the motorboat when ice appeared in the river. The urge to empty the ship with utmost speed impelled petitioner to operate the "Linseed King" on December 20, 1926, regardless of her

total unfitness to carry seventy-eight passengers and regardless of prevailing weather and ice conditions.

In response to the advertisement in the World a number of men appeared on the 95th Street dock. A large crowd, regular employees and applicants for temporary jobs, pushed its way on the boat. The exact number who got aboard will never be known, but the evidence clearly shows that the launch was permitted to become perilously overcrowded. The graphic evidence of these appalling conditions will be hereinafter specifically referred to.

The "Linseed King" left the 95th Street dock on the New York shore while it was still dark (Petition, R. 4; Meteorological Report, Claimant's Exhibit E, R. 2342), but never reached Edgewater. In midstream a crash was heard, water poured in and in two minutes' time the launch was under water (R. 124). Twenty-nine men survived, twenty-seven bodies were found in the cabin, eight in the river, and some twenty-three were missing (R. 124). When the vessel was taken ashore, after having been carried upstream to Riverdale by the incoming tide, her port bow was found to have been stove in. The opening was 19" long, 8¾" wide. This opening was made, as both District Court and Circuit Court found, by the impact of the boat against a body of floating ice (R. 124).

Concededly the river was full of ice in large blocks or floes at the time of the accident (Petition, R. 4). The evidence of ice conditions on and prior to December 20, 1926 will be hereinafter discussed in detail.

After a trial lasting nearly three weeks, during which about a hundred and nineteen witnesses were heard and some two thousand pages of testimony taken, the District Court denied limitation of liability upon all of the following grounds:

(a) That the "Linseed King" was unfit for service in an ice blocked stream (R. 128).

(b) That on the day of the disaster she carried too great a load (R. 134-5).

(c) That she was not manned by an adequate crew (R. 138).

(d) That the petitioner by Stover, its general manager, was in privity with and had knowledge of the fact that the "Linseed King" was being operated under the foregoing conditions (R. 137).

The District Court's finding is not only amply justified, but a contrary finding is unthinkable. Petitioner's managers and agents were culpably negligent and ignorant. The limitation statute (R. S., Section 4283, 46 U. S. C. A. §183), does not permit the operation of vessels in complete disregard of common rules of prudence.

The affirmance by the Circuit Court must be construed as confirming all the District Court's findings of fact. Although Judge Hand in his opinion adverts chiefly to the shipowner's privity with the culpable operation of the "Linseed King" through icy waters, it is submitted that approval of the other grounds found by the District Court for denial of limitation, to wit, overcrowding and inadequacy of crew, is implicit in the decree of the Circuit Court of Appeals.

POINT I.

Petitioner culpably permitted the "Linseed King" to be operated while there was ice in the river.

In the very nature of things, the only evidence as to petitioner's alleged rule that the "Linseed King" should not operate during the icy season, comes from petitioner. When the District Court says (R. 129) that "undisputed evidence" shows the giving of instructions down the line to discontinue operations, it does not follow that either District Court or Circuit Court attaches great importance to such "undisputed evidence." The impor-

tant question is not whether such rule had been promulgated, but whether anything was done to enforce the rule.

Assuming the order had been given, who was charged with enforcing it, who decided when it was to apply? The conclusion is irresistible that Stover, the general manager, had to pronounce the word that would stop the running of the vessel. Rowheder, the captain, had no such authority. It is inconceivable that Rowheder could have been intended, on his own responsibility, to lay up the boat, when Stover had brought a milling crowd of laborers to the 95th Street dock by his ad in the "World". Petitioner's witnesses say as much:

Rowheder (R. 316) testified that on a previous occasion Stover stopped the running of the boat by sending a man down to the dock to tell Rowheder to wait until a heavy wind blew over. Rowheder had been ready to embark, weather fair or foul. General instructions meant nothing, the boat ran unless a specific mandate to stop came from Stover. Unfortunately, on December 20, 1926, Stover was too preoccupied with unloading the "Tercero" to speak the word which would have saved more than fifty lives.

Rowheder (R. 324) indeed tells of Stover's eloquent silence from December 17, 1926 to December 20, 1926, during which days ice appeared time and again in the vicinity of petitioner's plant. The word to stop was not spoken, although the portent of disaster had given its warning.

The captain understood his duty to run the boat until he was definitely told to stop (R. 378).

Balz, petitioner's superintendent of transportation, allowed the "Linseed King" to run, although the thermometer indicated the imminence of ice floes (R. 509, 510). Even Balz, who was Rowheder's superior, denied that he had the responsibility of laying up the boat (R. 511).

Indeed, there is a direct finding by the District Court that the boat ran until Stover issued a specific order to stop (R. 133).

> "They (Stover and Johannis) could not supinely rest upon verbal instructions previously given him to lay up the boat, for Rowheder, who spoke to Stover about ice conditions, swears that they (Stover and Johannis) were to decide when the ice conditions became such that the boat was to be laid up."

The coming of the ice should not have been unexpected. Ice is a common winter phenomenon in the Hudson River. The U. S. Weather Bureau report for December 1926 indicates freezing weather, followed by a thaw. (Claimant's Exhibit E, R. 2341.) The maximum, minimum and mean temperatures ran as follows:

	Max.	*Min.*	*Mean*
Dec. 1	44	32	38
2	32	17	24
3	33	15	24
4	39	11	25
5	27	11	19
6	23	13	18
7	30	11	20
8	40	27	34
9	34	25	30
10	37	31	34
11	37	29	33
12	42	29	36
13	46	37	42
14	50	31	40
15	31	24	28
16	27	16	22
17	32	11	22
18	20	7	14
19	25	9	17
20	34	18	26

As a matter of fact ice is reported to have appeared at various points along the river and in New York Bay at periods from 48 hours to a week before the accident (R. 846; 850; 893; 896; 909; 917; 1024; 1027; 1032; 1071; 1075; 1109; 1114; 1138; 1231; 1244; 1252; 1268; 1639; 1714; 1722; 1743). Petitioner's own witnesses admit having seen ice in the river twenty-four or forty-eight hours before the accident (Chrisler, R. 1714, 22; Fort, R. 1743). Petitioner's counsel, in fact, admits as much in his summation (R. 1957) and in his brief on this appeal (p. 18). Both the District Court (R. 131) and the Circuit Court (R. 2369) found as a fact that Stover had more than reasonable warning. His failure to heed the warning means legal liability for petitioner, without limitation.

The weakness of petitioner's position is brought out by its confession that its manager acted in ignorance. On page 28 of petitioner's brief, it is said:

> "We submit, however, that the petitioner was not bound to speculate as to when ice would appear in the river."

Not only must petitioner not *speculate*, it must *know*. As Judge Hand tersely answers the plea of ignorance (R. 2369):

> "Chances must be ruled out, though remote."

Indeed, it has been held that limitation of liability will be denied for the shipowner's ignorance of the operation of natural laws.

> *McGill* v. *Michigan S. S. Co.*, 144 Fed. 788 (C. C. A. 9) cert. den. 203 U. S. 593.

For the first time, on its appeal to this Court, petitioner points out a supposed distinction between the discontinuance of regular trips and actually laying up the boat (Petitioner's brief, p. 17). This contention, although interesting as a metaphysical exercise, finds no basis in the record and was not urged before the lower courts. Whether trips were discontinued or whether the

boat were laid up is of no importance, either course would have avoided the disaster. Petitioner's manager took neither; on the contrary, he compelled the captain to run the boat on its last trip by advertising for laborers to meet her at 95th Street.

This Court has recognized the difference in fact and the consequent distinction in law between long and short voyages.

> *The Virginia* (*Hines* v. *Butler*), 264 Fed. 877; cert. den. 257 U. S. 659.

The owner's control over short trips is much greater, hence his responsibility is much wider, than in cases of transoceanic voyages.

Precedent and common justice alike point to the correctness of holding petitioner liable without limitation in this case.

POINT II.

Petitioner culpably and with knowledge permitted overcrowding of the "Linseed King".

Petitioner urges before this Court, as in the lower courts, that the boat was not overcrowded, and takes refuge in the mathematics of its expert witnesses. In the hands of hired experts mathematics become legerdemain, and the District Court decided the case on the evidence not of the experts, but of the eye witnesses (R. 136) and the dictates of common sense.

> "However I disregard the expert testimony on this point and give credence to the unimpeached evidence of many survivors. They substantially testified that the men in the cabin were crowded or jammed so closely together that there was interference with their movements. Such testimony is entitled to greater weight than testimony based on computation or calculation of area of available space, especially when it is corroborated by other facts and circumstances, namely, by evidence that

men were standing on the steps of the pilot-house near the front passageway and close around the engine."

The Circuit Court of Appeals did not disturb this finding, either expressly or by implication, and on this appeal it should be assumed to be true. There was a great deal of evidence justifying the District Court's conclusion that shocking overloading prevailed on the "Linseed King" (Kratovi, R. 932, 933, 935, 942; Horn, R. 946, 949, 951; Mitchell, R. 967, 971, 974; Johnson, R. 978, 979, 981, 987, 989; Barker, R. 1092, 1094, 1095; Cooper, R. 1140, 1149).

The District Court found 78 as the number of men on the "Linseed King" on her last voyage. There was ample evidence that this was too many. A comparison with other vessels shows that she customarily carried more human beings than prudent navigation permitted (Osborne, R. 1014 et seq.). The records of the steamboat inspectors show other vessels and their customary loads, as compared with the "Linseed King" as follows:

	Length	*Tonnage*	*No. of Passengers*	*Life Preservers*
Linseed King	**45 '**	**10.75**	**78**	**83**
Aljohn	45.1'	26	48	51
Atlas	56 '	26	46	48
Comfort	60 '	17	40	43
Doris	56.6'	28	137	140
Glory	44.5'	15.97	50	52
Grace Phillips..	41 '	18	45	48
Hercules	33.5'	17	19	21
Kid II	45.5'	15	60	63
Stranger	74 '	27	45	48
Ventura	59.7'	22	66	69
Vigil	51 '	26	90	32*
White City	56.5'	29	90	93
Lydia R.	44.8'	23	67	70
Mariquita	(no testimony)	18	45	47
Olga	41.1'	15.14	49	51
Pansy	43.5'	20	58	60

* Probable error in record.

No reasonable person, hearing the evidence of the survivors, could reach any conclusion other than that petitioner regularly permitted and abetted this perilous practice of overcrowding the boat.

Denial of limitation must follow overloading.

The Benjamin Noble (D. C. E. D. Mich.), 232 Fed. 382, affirmed (C. C. A. 6) 244 Fed. 95, affirmed 249 U. S. 334.

Contrary to the limited definition of seaworthiness claimed by petitioner, this Court held in the *Benjamin Noble* that a vessel's seaworthiness is a relative term, involving the question of the use to which the vessel is put.

POINT III.

The "Linseed King" was not manned by a sufficient crew.

The District Court properly found that the "Linseed King" was insufficiently manned on its last voyage (138). The fact that the boat had been licensed to carry a crew of one is of no significance because the licensing authorities did not contemplate that the boat would be used to ferry a great number of workingmen. The finding of the District Judge on this point is clearly sustained by the evidence. The inadequacy of the crew of the "Linseed King" is itself a sufficient ground for denying limitation.

In re Pacific Mail S. S. Co. (C. C. A. 9), 130 Fed. 76, certiorari denied (195 U. S. 32).

In that case the petitioner sought to limit liability for the foundering of a vessel in San Francisco Harbor. The evidence showed that the crew was sufficient in number

but spoke only Chinese, and could not understand orders given in English. As a result, the life-boats could not be launched in time to take all of the passengers. The court held that this rendered the boat unseaworthy. The crew must be competent not only for ordinary navigation but for any emergency which may reasonably be anticipated.

The inadequacy of the "Linseed King's" crew diminished the possibility of escape for her unfortunate passengers.

See also:

Parsens v. *Empire Transportation Co.* (C. C. A. 9), 111 Fed. 202;
The Bark Gentleman, Fed. Cas. 5324;
Tate v. *Levy,* 14 East 202;
Eastern S. S. Corp. v. *Great Lakes D. & D. Co.,* 256 Fed. 497.

POINT. IV.

The "Linseed King" was unseaworthy.

It is well settled and established that petitioner must prove that the vessel was *seaworthy* at the beginning of the voyage and that he had no privity with or knowledge or notice of the causes of her destruction. Conversely it is settled and established that the loss of the vessel is presumed to be caused by *unseaworthiness.* This presumption can be rebutted only by credible and ponderable proof of some other cause of loss.

Oregon Round Lumber Co. v. *Portland & Asiatic S. S. Co.* (D. C. Ore.), 162 Fed. 912;
Forbes v. *Merchants Exp. & Transp. Co.,* 111 Fed. 796;
The Willie (D. C. S. D. N. Y.) 134 Fed. 759, 761;
McGill v. *Michigan S. S. Co.* (*supra*), 144 Fed. 759, 761;

In Re Reichert Towing Line (C. C. A. 2), 251 Fed. 214, certiorari denied, 248 U. S. 565;
The William Nelson (D. C. E. D. N. Y.), 296 Fed. 553;
Sanborn v. *Wright & Cobb Lighterage Co.* (D. C. S. D. N. Y.), 171 Fed. 449, affirmed without opinion 179 Fed. 1021;
The Santa Rosa (D. C. N. D. Cal.), 249 Fed. 160;
In Re Jeremiah Smith & Sons, Inc. (C. C. A. 2), 193 Fed. 395.

Seaworthiness is a relative term. It involves much more than the mere structure of the vessel. A vessel cannot be seaworthy, until it shows itself able to meet the conditions under which it is made to run.

Weather conditions, reasonably predictable, enter into determining seaworthiness. A vessel "seaworthy" in fair weather may be "unseaworthy" when the barometer shows a hurricane.

Texas & Gulf S. S. Co. v. *Parker*, 263 Fed. 864 (C. C. A. 5), cert. den. 253 U. S. 488.

The "Linseed King" may have been adequate in structure for summer traffic but she was not "seaworthy" in an ice-blocked stream on December 20, 1926.

Again a vessel which is seaworthy with a proper load may become unseaworthy when filled with men beyond the limit of reasonable safety.

The Benjamin Noble, supra, 232 Fed. 382; aff'd 244 Fed. 95; aff'd 249 U. S. 334.

The evidence convincingly shows that the "Linseed King" operated under conditions so dangerous that disaster was almost inevitable. Under these circumstances there can be no limitation.

POINT V.

Petitioner was in privity with the negligent operation.

Petitioner's main office was at Buffalo, New York. It had a plant at Edgewater, N. J. Stover was admittedly in complete charge of this plant, including the "Linseed King" (Matthews, R. 1915; Kellogg, R. 1916). It was Stover (for whose acts petitioner is concededly liable) and not Rohweder, the launch captain who determined when the "Linseed King" should run (R. 352).

The customary trip of the "Linseed King" was across the Hudson River, a distance of less than one and a half miles. The boat was literally never out of Stover's sight. Even if Rohweder had general instructions not to run the boat in ice, petitioner is still liable because its orders were tacitly overruled by Stover, when, with his knowledge and consent, the boat was being run twice and sometimes four times daily during the dangerous season of the year. The culpability of Stover for the catastrophe of December 20, 1926, is even clearer when we consider that the District Court and the Circuit Court of Appeals found that ice in serious quantities had appeared in the Hudson River on December 18 and December 19, 1926, on both of which days Stover was present at petitioner's plant at the edge of the river. Furthermore on Sunday, December 19, 1926, Stover had inserted an advertisement in the New York World for laborers to meet the "Linseed King" on December 20, 1926 (R. 754-755). Under these circumstances the District Court and the Circuit Court found *as a fact* that Stover, and through him petitioner, tacitly or actively approved of the operation of the "Linseed King" across the Hudson River in the ice season. This conclusion of fact is amply supported by the evidence.

Under these circumstances petitioner, as a matter of law, was in privity with the negligent operation of the boat.

In Re Jeremiah Smith & Sons, Inc., 193 Fed. 395;

Texas & Gulf S. S. Co. v. *Parker*, 263 Fed. 864; cert. den. 253 U. S. 488;

In Re Reichert Towing Line, 251 Fed. 214, cert. den. 248 U. S. 565.

The authorities in this Court and in the lower Federal courts, cited by petitioner, in support of its application for certiorari on the first question, are readily distinguishable as to rules of law and, in the cases of the District Court and Circuit Court opinions, are largely upon questions of fact peculiar to each particular case.

La Bourgogne, 210 U. S. 95, was the case of an ocean liner negligently navigated through a fog on the high seas. The distinction between ocean voyages and ferry voyages has been recognized by this court. *The Virginia*, 264 Fed. 877; cert. den. 257 U. S. 659. Petitioner's liability in this case is based, not upon the negligent navigation of a seaworthy vessel, but upon petitioner's culpable operation of a vessel totally unseaworthy for the uses to which petitioner put it.

The other cases in this Court (*Butler* v. *Boston S. S. Co.*, 130 U. S. 527; *Richardson* v. *Harmon*, 222 U. S. 96; *The City of Norwich*, 118 U. S. 468; *The North Star*, 106 U. S. 17; *The Scotland*, 105 U. S. 24), cited by petitioner contain certain general statements as to the meaning and effect of the Act of 1851 but have nothing whatever to do with this case and need not even be discussed.

Craig v. *Continental Ins. Co.*, 141 U. S. 638 is easily distinguished in that the disaster in that case was caused by one Reardon who was an employee of a third party and not the shipowner's employee at all. This Court said at page 646:

"Where the owner is a corporation, the privity or knowledge must be that of the managing officers of the corporation."

Stover was the manager of the shipowner's plant at Edgewater, N. J., occupying a position of trust, discretion and executive power. Petitioner does not dispute that it is bound by Stover's acts.

American Hawaiian S. S. Co. v. *Pacific S. S. Co.*, 41 F. (2d) 718 (C. C. A. 9), was a case very similar to *La Bourgogne*, where the ship was operated at an excessive speed through a fog, carrying an insufficient watch. Again common sense points out the vast difference between an ocean voyage where navigation must necessarily be left to the discretion of a competent sea captain who should be master of his craft and a voyage across the Hudson River where the captain is little better than a mechanic working in petitioner's factory and where every detail of the operation of the launch is ordered by the factory manager.

Kitsap County Transp. Co. v. *Harvey*, 15 F. (2d) 166 (C. C. A. 9), involved a question of the *construction* of a rather large vessel, a ferry boat, and the ferry company was held to have done its duty when it employed competent shipbuilders to build the boat. We feel the case is doubtful authority in view of the holding of the Circuit Court of Appeals in the *Virginia*, 264 Fed. 877, in which this Court denied certiorari, 257 U. S. 659, hereafter discussed. In any event, it is *use*, not construction, which is involved in this case, and the competency of the shipbuilder cannot save petitioner from liability for grossly improper use of the vessel.

Warken v. *Moody*, 22 F. (2d) 960 (C. C. A. 5), was a case where the disaster was caused by the negligence of the launch captain in performing a *technical* operation, namely, the repair of the motor of the launch which, for some unexplained reason, ceased to function during a voyage.

Standard Wholesale P. & Acid Works v. *Chesapeake L. & T. Co.*, 16 F. (2d) 765 (C. C. A. 4), was a finding of

freedom from negligence rather than freedom from privity. It is respectfully submitted that in that case the Court confused the issues of negligence and privity and the opinion is probably of little value.

Quinlan v. *Pew*, 56 Fed. 111 (C. C. A. 1), is an early case and again relates to a defect in a technical feature of the boat's construction. It is questionable whether this case would in any event still be considered good law in view of the much stricter standards of care imposed by the later cases upon ships carrying passengers.

The North Star, 3 F. (2d) 1010 (D. C. Mass.), was a clear case of a vessel running aground through negligent navigation. No privity of the shipowners could be shown in respect to the captain's careless direction of the ship through a fog.

There are numerous authorities holding that on short voyages comparable to that of the "Linseed King", privity will be found where the vessel is permitted to operate under dangerous conditions.

> *Texas & Gulf S. S. Co.* v. *Parker*, 263 Fed. 864 (C. C. A. 5) (certiorari denied 253 U. S. 488).

This distinction between long and short voyages is well established.

> *The Virginia* (*Hines* v. *Butler*) (D. C.), 264 Fed. 986, affirmed (C. C. A. 4) 278 Fed. 877, certiorari denied, 257 U. S. 659.

"The Virginia" was a vessel plying regularly between Baltimore and Norfolk, an overnight voyage down Chesapeake Bay. The ship was destroyed by fire en route from Baltimore to Norfolk. The court found that due to the master's negligence the fire fighting apparatus was not in condition to meet the emergency. The shipowners were held liable for personal injury claims *without limitation*. Privity was brought home to the owner only because the boat was used exclusively for *short voyages*, and therefore under the owner's daily supervision.

The "Linseed King" was operated on December 20, 1926, even nearer its home dock. It was never more than a mile away. Without reviewing all the testimony regarding the presence of ice blocks in the Hudson on and before December 20, 1926, and accepting the inferences most favorable to petitioner, it is conclusively established that floating ice had been observed at midnight, December 18, 1926, by the barge dispatcher of the New York Central Railroad, stationed at the foot of West 65th Street, Manhattan (R. 1714, 1722). His observations were made thirty hours before the last voyage of the "Linseed King" and his notation in his records that there was ice in the river indicates that *the ice was present in sufficient quantities to interfere with the navigation of the heavy car floats under his care.* Practically all of petitioner's employees who had crossed on the "Linseed King" on December 19, 1926, saw ice in the river on that day. Stover had due warning that navigation of the boat on December 20, 1926, involved an unjustifiable risk. Unfortunately he was more interested in hiring extra laborers than in safeguarding their lives.

Stover was admittedly in complete charge of petitioner's Edgewater plant, including the "Linseed King". His negligence caused the disaster and the petitioner is liable for such negligence *without limitation.*

In Re Jeremiah Smith & Sons, Inc. (C. C. A. 2), 193 Fed. 395.

Whatever questions of privity may have appeared were purely questions of fact. On ample evidence the District Court and the Circuit Court found against petitioner. We respectfully submit there is no warrant for disturbing these findings. The record is devoid of any question of law on this point, worthy of review by this Court.

POINT VI.

In Conclusion.

The unseaworthiness of the "Linseed King" and the privity of the owner were amply proved, and insofar as it denies limitation and makes awards of damages, the decree of the Circuit Court should be affirmed and interest directed to continue to the date of payment, pursuant to Rule 30, Subd. 4.

These respondents take no position with reference to the appeal by claimants whose claims were dismissed.

Respectfully submitted,

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